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OFFICE OF PETITIONS

In re Application of:

Bricaud, et al.

Filed: 8 September, 2003

Application No. 10/657,423

Docket No. C-CPI-0111

DECISION ON PETITION

This is a decision on the letter, considered as a petition, filed on 14 June, 2004, as well as reconsidering the petition filed on 22 March, 2004, all considered under 37 C.F.R. §1.53 as a request that the application obtain a filing date of 8 September, 2003, for pages numbered 1 (the Abstract) and 32 - 36 (Claims 4 - 17) of the application.

For the reasons set forth below, the petition under 37 C.F.R. §1.53 is **GRANTED**.

This nonprovisional application was deposited on 8 September, 2003.

On 12 March, 2004, the Office mailed a "Notice to File Corrected Application Papers (Filing Date Granted)" and indicated that the Abstract (also identified as "Page(s) 1 of the specification (description and claims)") appeared to have been omitted from the application.

Petitioner responded with a petition on 22 March, 2004, along with, *inter alia*, a copy of the Abstract (also identified as "Page(s) 1 of the specification (description and claims)"), and a copy of the date-stamped (8 September, 2003) receipt card indicating, *inter alia*, that the following items had been received by the Office:

Patent Transmittal Form w/certificate of mailing via Express Mail
Label EV026935178US
Utility Patent Application (36 pages)

49 Sheets of Drawings (Figs. 1 – 57)
Declaration for Patent Application
Check in the amount of \$918.00

As is clear from the foregoing, the receipt card (see: MPEP §503¹) did not specify the pages containing the Abstract, the Specification, and the Claims, however, Petitioner alleged that the Abstract is in fact Page 1 of the Application.

At the time the 22 March petition was considered and decided, a review of the Image File Wrapper (IFW) of this application indicated that it contained pages 2 - 30 of Specification and page 31 of the Claims (with Claims 1 and 2 and at least a portion of Claim 3), however, the file did not appear to contain pages 32 - 36 of the application.

In order to simplify addressing this matter, the 22 March petition was dismissed on 7 June, 2004, with an inquiry to the Petitioner as to whether he wished to address the pages 32 - 36 as well.

Petitioner, by virtue of the papers filed on 14 June, 2004, has done so.

¹ MPEP §503 provides in pertinent part:
§503 Application Number and Filing Receipt

A return postcard should be attached to *each* patent application for which a receipt is desired. It is important that the return postcard itemize all of the components of the application. If the postcard does not itemize each of the components of the application, it will not serve as evidence that any component which was not itemized was received by the United States Patent and Trademark Office (USPTO). It should be recognized that the identification of an application by application number does not necessarily signify that the USPTO has accepted the application as complete (37 C.F.R. §1.53(a)).

RETURN POSTCARD

If a receipt of any item (e.g., paper or fee) filed in the USPTO is desired, it may be obtained by enclosing with the paper a self-addressed postcard specifically identifying the item. The USPTO will stamp the receipt date on the postcard and place it in the outgoing mail. A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

The identifying data on the postcard should be so complete as to clearly identify the item for which receipt is requested. For example, the postcard should identify the applicant's name, application number (if known), confirmation number (if known), filing date, interference number, title of the invention, etc. The postcard should also identify the type of paper being filed, e.g., new application, affidavit, amendment, notice of appeal, appeal brief, drawings, fees, motions, supplemental oath or declaration, petition, etc., and the number of pages being submitted. If a new application is being filed, all parts of the application being submitted should be separately listed on the postcard, e.g., the number of pages of specification (including written description, claims and abstract), number of claims, number of sheets of drawings, number of pages of oath/declaration, number of pages of cover sheet (provisional application).

The postcard receipt will not serve as *prima facie* evidence of receipt of any item which is not adequately itemized on the postcard. For example, merely listing on the postcard "a complete application" or "patent application" will not serve as a proper receipt for each of the required components of an application (e.g., specification (including claims), drawings (if necessary), oath or declaration and the application filing fee) or missing portions (e.g., pages, sheets of drawings) of an application if one of the components or portion of a component is found to be missing by the USPTO. Each separate component should be specifically and properly itemized on the postcard. Furthermore, merely incorporating by reference in the postcard receipt, the items listed in a transmittal letter will not serve as *prima facie* evidence of receipt of those items.

The person receiving the item(s) in the USPTO will check the listing on the postcard against the item(s) being filed to be sure they are properly identified and that all the items listed on the postcard are presently being submitted to the USPTO. If any of the items listed on the postcard are not being submitted to the USPTO, those items will be crossed off and the post-card initialed by the person receiving the items. Upon return of a postcard receipt from the USPTO, the postcard receipt should be promptly reviewed by the person who filed the items to ensure that every item specifically denoted on the postcard was received by the USPTO. If the postcard receipt has been annotated to indicate that a particular item denoted on the postcard was not received by the USPTO, the postcard receipt will not serve as *prima facie* evidence of receipt of that item in the USPTO. (Emphasis supplied.)

A review of the application papers reveals that the application in fact was filed and received in the Office on 8 September, 2003, and that a comparison of the date-stamped (8 September, 2003) copy of the receipt card filed by Petitioner and the contents of the file indicate that the file contains, *inter alia*, specification pages 2 - 20 and page 30 of the Claims, along with 49 sheets of drawings (Fig. 1 - 57).

Because the return postcard receipt properly itemizes the contents of the application package in accordance with MPEP §503, the Office concludes that the page 1 (the Abstract) and pages 32 - 36 (Claims 4 - 17) were submitted on 8 September, 2003, and subsequently was misplaced in the Office.

Accordingly, the petition under 37 C.F.R. §1.53 is **granted**; the petition fee is refunded via Treasury check; and the Notice mailed on 12 March, 2004, hereby is withdrawn as to page 1 (the Abstract) of the application.

This application is released to the Office of Initial Patent Examination for further processing with a filing date of 8 September, 2003, using:

1. pages 2 - 30 (Specification), page 31 (Claims 1 - 3), and 49 sheets of drawings (Figs. 1 - 57), deposited on 8 September, 2003; and
2. page 1 (Abstract), deposited on 22 March, 2004;
3. pages 32 - 36 (Claims 4 - 17), deposited on 14 June, 2004; and further
4. with direction to OIPE to correct Office records to reflect that 36 pages of specification (description, claims and abstract) and 49 sheets of drawings were present on filing on 8 September, 2003, and forward to Petitioner a corrected filing receipt setting forth a filing date of 8 September, 2003, reflecting therein that 36 pages of specification (description, claims and abstract) and 49 sheets of drawings were present on filing.

Thereafter, the application will be considered by the examiner in due course.

Telephone inquiries concerning this decision may be directed to the undersigned at (703)305-9199.



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